

757

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. FUSCHILLO, LARKIN, LAVALLE, RANZENHOFER -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the vehicle and traffic law, in relation to compulsory chemical tests

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Paragraph (b) of subdivision 3 of section 1194 of the
2 vehicle and traffic law, as added by chapter 47 of the laws of 1988, is
3 amended to read as follows:
4 (b) When authorized. Upon refusal by any person to submit to a chemi-
5 cal test or any portion thereof as described above, the test shall not
6 be given unless a police officer or a district attorney, as defined in
7 subdivision thirty-two of section 1.20 of the criminal procedure law,
8 requests and obtains a court order to compel a person to submit to a
9 chemical test to determine the alcoholic or drug content of the person's
10 blood upon a finding of reasonable cause to believe that:
11 (1) [such person was the operator of a motor vehicle and in the course
12 of such operation a person other than the operator was killed or
13 suffered serious physical injury as defined in section 10.00 of the
14 penal law; and
15 (2)] a. either such person operated the vehicle in violation of any
16 subdivision of section eleven hundred ninety-two of this article, or
17 b. a breath test administered by a police officer in accordance with
18 paragraph (b) of subdivision one of this section indicates that alcohol
19 has been consumed by such person; and
20 [(3)] (2) such person has been placed under lawful arrest; and
21 [(4)] (3) such person has refused to submit to a chemical test or any
22 portion thereof, requested in accordance with the provisions of para-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 graph (a) of subdivision two of this section or is unable to give
2 consent to such a test.

3 S 2. Subparagraphs 1 and 2 of paragraph (b) of subdivision 2 of
4 section 1194 of the vehicle and traffic law, as amended by chapter 196
5 of the laws of 1996, are amended to read as follows:

6 (1) If: (A) such person having been placed under arrest; or (B) after
7 a breath test indicates the presence of alcohol in the person's system;
8 or (C) with regard to a person under the age of twenty-one, there are
9 reasonable grounds to believe that such person has been operating a
10 motor vehicle after having consumed alcohol in violation of section
11 eleven hundred ninety-two-a of this article; and having thereafter been
12 requested to submit to such chemical test and having been informed that
13 the person's license or permit to drive and any non-resident operating
14 privilege shall be immediately suspended and subsequently revoked, or,
15 for operators under the age of twenty-one for whom there are reasonable
16 grounds to believe that such operator has been operating a motor vehicle
17 after having consumed alcohol in violation of section eleven hundred
18 ninety-two-a of this article, shall be revoked for refusal to submit to
19 such chemical test or any portion thereof, whether or not the person is
20 found guilty of the charge for which such person is arrested or
21 detained, refuses to submit to such chemical test or any portion there-
22 of, [unless a court order has been granted pursuant to subdivision three
23 of this section, the test shall not be given and] a written report of
24 such refusal shall be immediately made by the police officer before whom
25 such refusal was made. Such report may be verified by having the report
26 sworn to, or by affixing to such report a form notice that false state-
27 ments made therein are punishable as a class A misdemeanor pursuant to
28 section 210.45 of the penal law and such form notice together with the
29 subscription of the deponent shall constitute a verification of the
30 report.

31 (2) The report of the police officer shall set forth reasonable
32 grounds to believe such arrested person or such detained person under
33 the age of twenty-one had been driving in violation of any subdivision
34 of section eleven hundred ninety-two or eleven hundred ninety-two-a of
35 this article[,] AND that said person had refused to submit to such chem-
36 ical test[, and that no chemical test was administered pursuant to the
37 requirements of subdivision three of this section]. The report shall be
38 presented to the court upon arraignment of an arrested person, provided,
39 however, in the case of a person under the age of twenty-one, for whom a
40 test was authorized pursuant to the provisions of subparagraph two or
41 three of paragraph (a) of this subdivision, and who has not been placed
42 under arrest for a violation of any of the provisions of section eleven
43 hundred ninety-two of this article, such report shall be forwarded to
44 the commissioner within forty-eight hours in a manner to be prescribed
45 by the commissioner, and all subsequent proceedings with regard to
46 refusal to submit to such chemical test by such person shall be as set
47 forth in subdivision three of section eleven hundred ninety-four-a of
48 this article.

49 S 3. Subparagraph 2 of paragraph (d) of subdivision 3 of section 1194
50 of the vehicle and traffic law, as added by chapter 47 of the laws of
51 1988, is amended to read as follows:

52 (2) The applicant must provide identification by name and title and
53 must state the purpose of the communication. Upon being advised that an
54 application for a court order to compel submission to a chemical test is
55 being made, the court shall place under oath the applicant and any other
56 person providing information in support of the application as provided

1 in subparagraph three of this paragraph. After being sworn the applicant
2 must state that the person from whom the chemical test was requested was
3 the operator of a motor vehicle and [in the course of such operation a
4 person, other than the operator, has been killed or seriously injured
5 and], based upon the totality of circumstances, there is reasonable
6 cause to believe that such person was operating a motor vehicle in
7 violation of any subdivision of section eleven hundred ninety-two of
8 this article and, after being placed under lawful arrest such person
9 refused to submit to a chemical test or any portion thereof, in accord-
10 ance with the provisions of this section or is unable to give consent to
11 such a test or any portion thereof. The applicant must make specific
12 allegations of fact to support such statement. Any other person properly
13 identified, may present sworn allegations of fact in support of the
14 applicant's statement.
15 S 4. This act shall take effect immediately.